

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

RYAN STEWART CHAN,

License No. PT 19081,

Respondent

Case No. 1D 2002 62966

OAH No. L2003050386

DECISION

The Physical Therapy Board of California heard this matter on May 19, 2003, in Orange, California. The Board members participating in the hearing and decision were Ellen Wilson, P.T.-President, Jay H. Segal, P.T.-Vice President, Louis Garcia, Jerry Kaufman, P.T., Donald Chu, Ph.D., P.T., and James Turner. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided.

Rajpal S. Dhillon, Deputy Attorney General, represented Complainant.

Respondent appeared on his own behalf.

Oral and documentary evidence was taken and argument made. The matter was submitted, following which the Board met in an executive session, and the matter was decided on May 19, 2003.

The below order, RESTRICTING Respondent's license during a five year PROBATION on various terms, is based on the following Factual Findings and Legal Conclusions:

FACTUAL FINDINGS

1. Steven K. Hartzell ("Complainant") filed the Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs ("Board"). Respondent filed a Notice of Defense, which requested the instant hearing.

2. On May 27, 1993, the Board issued Physical Therapist License Number PT 19081 to Respondent. The license was in full force and effect at all times relevant, with an expiration date of February 28, 2005, unless renewed.

3. In addition to being licensed in California, Respondent was also issued by the Arizona Board of Physical Therapy (Arizona Board) an Arizona Physical Therapy License, number 2826, in March of 1994.

4. On March 15, 2001, Respondent, while performing as a physical therapist, left the University Medical Center (UMC), located in Tucson, Arizona, which was the outpatient clinic at which he was employed, leaving unattended the patient he was treating. He never returned to the clinic that day, nor did he make arrangements for another physical therapist to resume supervision or control of that patient's treatment. It was not established such conduct directly harmed the patient.

5. On March 26, 2001, Respondent borrowed \$ 200.00 from the insurance co-pays cash box at UMC, without the permission of a supervisor in authority, and in violation of written UMC policy. Respondent admits he borrowed this amount under dishonest circumstances. After later disclosing to his employer that he had taken this amount, Respondent repaid the sum.

6. After being apprised of the above-described conduct, the Arizona Board started an investigation. During the course of this investigation, Respondent revealed that he had a gambling addiction and was also suffering from depression, both of which he concluded caused him to act as above. He also admitted such was impairing his ability to practice physical therapy.

7. During the course of the investigation, the Arizona Board and Respondent also agreed that Respondent would: obtain a current mental health evaluation regarding his gambling addiction and depression; send to the Arizona Board a treatment plan there from; send the Arizona Board copies of medical reports; regularly attend a support/recovery group for compulsive gamblers from a program that would document his attendance; and request his sponsor from Gamblers Anonymous to send a letter report on Respondent's attendance at meetings.

8. After Respondent failed to comply with some of the agreed requirements, and Respondent had been ordered to appear before the Arizona Board for that reason, he surrendered his Arizona license to the Arizona Board. On September 28, 2001, an order by the Arizona Board was promulgated which accepted Respondent's surrendered Arizona Physical Therapy License number 2826. At the time of surrender, Respondent was still under investigation by the Arizona Board.

9. At the time in question, Respondent was undergoing stress and personal difficulties, leading to a divorce. He became depressed and sought gambling as a way out of his depression. He became addicted to gambling and his depression worsened to the point where he had suicidal ideations. Respondent felt unable to competently perform his physical therapy duties. After leaving work the day in question, he quit his job and stopped performing as a physical therapist for many months.

10. Respondent ultimately sought treatment for his problems and began the process of recovery. He underwent six (6) months of counseling, has been under a doctor's care, and takes prescriptive medications. He has seen a psychiatrist for the last two (2) months. He gradually resumed work as a physical therapist in California after moving from Arizona, and has done so without incident. His current employer is knowledgeable and supportive of his situation. He continues to attend Gamblers Anonymous meetings regularly and has a sponsor there. He is remorseful for his prior conduct and has apologized to those he harmed before thereby.

11. The Board has incurred actual and reasonable costs from the investigation and prosecution of this case, in the amount of \$ 5,376.00.

LEGAL CONCLUSIONS

1. **FIRST CAUSE FOR DISCIPLINE (Out of State Discipline).** Respondent is not subject to disciplinary action under Business & Professions Code ("B&P Code") section 141, subdivision (a), since it was not established that he has been disciplined by another state, within the meaning of this statute. B&P Code section 141(a) provides for discipline when there is "... a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license,"

In the case at bar, although Respondent and the Arizona Board agreed to a course of action responding to his gambling and depression, and Respondent ultimately surrendered his license (which the Arizona Board accepted), it was not established that such amounted to disciplinary action within the meaning of B&P Code section 141(a). Thus, there is no basis for discipline in California based on those events. Factual Findings 1-8.

2. **SECOND CAUSE FOR DISCIPLINE (Dishonesty and Corruption).** Respondent is subject to disciplinary action under B&P Code section 2660, subdivision (l), because it was established that he committed an act that involved dishonesty and corruption, that was "... substantially related to the qualifications, functions, or duties of a physical therapist." Specifically, in relation to his job as a physical therapist, Respondent took \$ 200.00 cash from his clinic's insurance co-pays cash box under dishonest circumstances, in violation of written clinical policy. That conduct was clearly related to his qualifications, duties and functions as a physical therapist. Factual Findings 1-8.

3. **THIRD CAUSE FOR DISCIPLINE (Impaired Ability to Practice Physical Therapy Because of Mental Illness and Addiction).** Respondent is subject to disciplinary action under B&P Code section 822, which provides, in pertinent part, that discipline may be triggered when a "... licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency," It was established that Respondent's ability to practice physical therapy was impaired while he

performed such in Arizona due to his depression and gambling addiction. These are problems he continues to battle through treatment and medication, and future relapse would no doubt impair his performance, as it had in Arizona before. Factual Findings 1-10.

4. DISPOSITION. B&P Code section 822 allows the Board to take appropriate disciplinary action, including: “(b) Suspending the licentiate's right to practice; (c) Placing the licentiate on probation; (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper. . . .”

In this case, it is undisputed Respondent previously suffered from depression and a gambling addiction, which interfered with his ability to practice as a physical therapist. He continues to receive treatment therefore and a relapse will no doubt interfere with his future performance as such. The public will be adequately protected by five years probation and monitoring of Respondent’s continued recovery from these problems, amongst other terms and conditions. Factual Findings 1-10.

5. COSTS. B&P Code section 2661.5, subdivision (a), states: “In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.” In this case, it was established that the Board has incurred such costs in the amount of \$ 5,376.00.

ORDER

Physical Therapist License Number PT 19081, issued to Respondent Ryan Stewart Chan, is REVOKED; however, the revocation is STAYED, and Respondent is placed on PROBATION for FIVE (5) years, upon the following terms and conditions:

1. *Psychiatric/Psychological Evaluation and Treatment*

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric/psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed psychiatrist/psychologist, who shall furnish an evaluation report to the Board or its designee. The respondent shall pay the cost of the psychiatric/psychological evaluation.

Respondent shall not engage in the practice of physical therapy until notified by the Board or its designee of its determination that respondent is mentally fit to practice safely. The Board will not do so unless and until it is notified by an approved psychiatrist or psychologist that respondent is mentally fit to practice safely and is cleared to do so.

If respondent is required by the Board or its designee to also undergo psychiatric/psychological treatment, respondent shall within 30 days of the requirement submit to the Board for its prior approval the name and qualifications of a psychiatrist/psychologist of respondent's choice. Respondent shall undergo and continue psychiatric/psychological treatment until further notice from the Board or its designee.

Respondent shall have the treating psychiatrist/psychologist submit quarterly status reports to the Board or its designee indicating whether the respondent is capable of practicing physical therapy safely and indicating the specifics of any change in his medications.

2. *Attendance of Support Groups for Compulsive Gamblers*

Respondent shall regularly attend Gamblers Anonymous for the duration of this probation, and document such attendance in a log to be provided the Board upon request. The burden of satisfactorily documenting and establishing such to the Board is on respondent at all times. Respondent shall also continue to have a sponsor in Gamblers Anonymous for the duration of this probation, and shall have that sponsor submit quarterly status reports to the Board or its designee indicating whether respondent is in compliance with the program of recovery.

3. *Written Exam On the Laws & Regulations Governing the Practice of Physical Therapy*

Within 90 days of the effective date of this decision, respondent shall take and pass the Board's written examination on the laws and regulations governing the practice of physical therapy in California. If respondent fails to pass the examination, respondent shall be suspended from the practice of physical therapy until a repeat examination has been successfully passed.

4. *Cost Recovery*

Respondent shall reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board in the amount of \$ 5,376.00. However, respondent shall only pay the Board \$ 100.00 per month, beginning the first month of his probation, until the full amount is reimbursed.

5. *Obey All Laws*

Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice of physical therapy in California.

6. *Compliance With Orders of a Court*

Respondent shall be in compliance with any valid order of a court. Being found in contempt of any court may constitute a violation of probation.

7. *Compliance With Criminal Probation and Payment of Restitution*

Respondent must not violate any terms and conditions of criminal probation and be in compliance with any restitution ordered.

8. *Quarterly Reports*

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

9. *Probation Monitoring Program Compliance*

Respondent shall comply with the Board's probation monitoring program.

10. *Interview With the Board or its Designee*

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice.

11. *Notification of Probational Status to Employers*

Respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the accusation and the decision and order to the employer. The respondent shall obtain written confirmation from the employer that the documents were received. If the respondent changes, or obtains additional employment, the respondent shall provide the above notification to the employer and submit written employer confirmation to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.

12. *Notification of Change of Name or Address*

The respondent shall notify the Board, in writing, of any and all changes of name or address within ten days.

13. *Prohibited Use of Aliases*

Respondent may not use aliases and shall be prohibited from using any name which is not his/her legally-recognized name or based upon a legal change of name.

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14. *Work of Less Than 20 Hours Per Week*

If respondent works less than 192 hours in a period of three months, those months shall not be counted toward satisfaction of the probationary period. The respondent shall notify the Board if he works less than 192 hours in a three month period.

15. *Tolling of Probation*

The period of probation shall run only during the time respondent is practicing within the jurisdiction of California. If, during probation, respondent does not practice within the jurisdiction of California, respondent is required to immediately notify the probation monitor in writing of the date that respondent's practice is out of state, and the date of return, if any. Practice by the respondent in California prior to notification to the Board of the respondents return will not be credited toward completion of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

16. *Violation of Probation*

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. *Cease of Practice Due To Retirement, Health or Other Reasons*

Following the effective date of this probation, if respondent ceases practicing physical therapy due to retirement, health or other reasons respondent may request to surrender his license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable, the respondent makes application for the renewal of the tendered license or makes application for a new license.

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18. *Completion of Probation*

Upon successful completion of probation, respondent's license or approval shall be fully restored.

IT IS SO ORDERED. This Decision shall be effective August 11, 2003.

Dated: 7/10/03

Original Signed By
ELLEN WILSON, P.T., President,
Physical Therapy Board of California